

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA <i>et al.</i>)	
<i>ex rel.</i> JOHN R. BORZILLERI, M.D.,)	
)	Civil Action No.
Plaintiffs,)	14-CV-031-WES-LDA
-v.-)	
)	
BAYER HEALTHCARE)	
PHARMACEUTICALS, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

Further to the Court’s text order of earlier today granting the Government’s motion to dismiss under 31 U.S.C. § 3730(c)(2)(A), the United States writes to respectfully clarify its position with respect to the nature of the dismissal of this matter in advance of the written memorandum of decision referenced in the text order. Specifically, the United States respectfully requests that any such dismissal of Relator’s False Claims Act allegations be with prejudice to Relator, but *without* prejudice to the United States or the Plaintiff States. This request accords with general practice in other cases granting Section 3730(c)(2)(A) dismissals. *See, e.g. United States ex rel. Toomer v. TerraPower, LLC*, No. 4:16-CV-00226-DCN, 2018 WL 4934070, at *6 (D. Idaho Oct. 10, 2018) (“the court finds it appropriate to dismiss the FCA claims with prejudice as it relates to [relator] but without prejudice as it relates to the government.”) (internal citation omitted). Because the United States has not intervened in this action, nor has it litigated any claims on the merits, we respectfully maintain that dismissal without prejudice to the Government is appropriate to preclude any argument, in a future case, that the dismissal of this action forecloses the government from pursuing a factually supported legal theory of FCA liability against any named defendant.

Dated: Providence, Rhode Island
September 27, 2019

Respectfully submitted,

AARON L. WEISMAN
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that, on September 27, 2019, I caused the foregoing document to be filed by means of this Court's Electronic Case Filing (ECF) system, thereby serving it upon all registered users in accordance with Federal Rules of Civil Procedure 5(b)(2)(E) and 5(b)(3) and Local Rules Gen 304 and 305.

Dated: September 27, 2019

By: /s/ Zachary A. Cunha
Zachary A. Cunha
Assistant United States Attorney